

INTERNAL REVENUE SERVICE
District Director

Department of the Treasury

c/o McCaslin Industrial Park
2 Cupania Circle
Monterey Park, CA 91754
Attn: Review

Date: SEP 20 1993

Employer Identification Number:
[REDACTED]

Person to Contact:
[REDACTED]

Telephone Number:
[REDACTED]

In Reply Refer to:
[REDACTED]

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code of 1986.

FACTS

The information submitted discloses that you were incorporated under the Non-Profit Mutual Benefit Corporation Law of the state of [REDACTED] on [REDACTED].

Article II of your Articles of Incorporation states that the specific and primary purpose for which your corporation was formed was to operate and maintain the common areas of the [REDACTED].

Your application Form 1024, states that your present and planned activities consist of providing maintenance and operation of the common areas of the [REDACTED] (hereinafter referred to as "Mall"). The area consists of one and one-half blocks by three blocks of walkways, stairwells, entrances, restrooms, and planters in a covered shopping mall. As part of a shopping mall, the area is open to the general public. You will fulfill your functions by hiring individuals or businesses to perform janitorial, security, maintenance and other services for the common areas.

All common areas were originally city streets which was converted into an enclosed shopping mall. The common areas are owned by the [REDACTED], part of the City of [REDACTED]. Due to budget constraints, the [REDACTED] wishes to cease operation and maintenance of the mall which caused this organization to be formed.

Per Article II of your Bylaws, you have no members. The power of your corporation is vested in your Board of Directors. As stated in section 3.02 of Article III of your Bylaws, a Director must be an owner of real property located in the [REDACTED].

██████████ or the employee of an owner of such property.

Funding will come from the City of ██████████ for the first six months. Thereafter, it is anticipated that funding will come from a combination of assessments levied upon property owners of the Mall and contributions from the City.

LAW

Internal Revenue Code section 501(c) describes certain organization exempt from income tax under section 501(a) and reads in part, as follows:

"(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

Section 1.501(c)(4)-1(a)(2)(ii) of the regulations provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations that are operated for profit.

In *Erie Endowment v. United States*, 316 F.2d 151, the Court held that the concept of social welfare suggests benefits affecting a whole community of people rather than a private group of citizens.

In Revenue Ruling 77-273, 1977-1 C.B. 195, it was held that an organization which was formed to provide security services for residents and property owners of a particular community was not exempt from Federal income tax under section 501(c)(4). It was held that this organization was carrying on a business with the general public in a manner similar to organizations operated for profit. The business nature of this organization's operations was not affected merely because the recipients paid compensation characterized as "voluntary donations." This ruling also held that the fact that some free security services were provided did not satisfy the requirements of the regulations that an organization be primarily engaged in some way the common good and general welfare of the people of the community.

TAXPAYER'S POSITION

You argue that your organization should be granted tax-exemption as the maintenance of the common areas is an activity formerly performed by the City of [REDACTED] through the [REDACTED]. You also contend that the maintenance promotes a healthy downtown area. It is further argued that the entire downtown area benefits from the maintenance and upkeep by attracting new business and customers to the area.

ANALYSIS

In order to meet the requirements of Internal Revenue Code section 501(c)(4) an organization must not be operated for profit but be operated exclusively for the promotion of social welfare. As held in the Erie Endowment case, the promotion of social welfare suggests benefits affecting a whole community of people rather than a private group of citizens.

Exemption from income tax cannot be granted merely because a City formerly carried on the activities which an applicant organization is now engaging in. All the facts and circumstances must be considered.

It is true that providing maintenance, security and janitorial services for the common areas of the Mall promotes a healthy downtown area, as the Mall is part of downtown [REDACTED]. However, this is incidental in comparison to the benefits that the property owners of the [REDACTED] receive. It is a service being done as an agent for the different shop owners. If your organization did not provide maintenance of the common areas, each shop or property owner would have to provide their own cleaning and security service. Your organization provides a convenient and cost efficient means for maintenance of the common areas of the mall. In addition, you are providing services similar to almost every other mall administrative office. By doing so you are similar to the organization described in Revenue Ruling 77-273 in that you are carrying on a business similar to organizations which operate for a profit.

Furthermore, the attraction of business and customers to the Mall is not a social welfare activity as described in section 501(c)(4) of the Code. The maintenance directly benefits the Mall merchants first and the community as a whole secondarily at best. The [REDACTED] is not synonymous with a community either in a geographic or political sense.

It is the position of the Internal Revenue Service that you do not qualify as an organization described in Internal Revenue Code section 501(c)(4).

You are required to file Federal income tax returns annually, with the District Director.

[REDACTED]

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018. Please note that the instructions for signing on the reverse side of this form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information in support of your position as explained in the enclosed Publication 892. You will be contacted to arrange a date for a hearing. The hearing may be held at the Office of Regional Director of Appeals, or if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. Section 7428(b)(2) of the Internal Revenue Code provides, in part that, "a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely,

[REDACTED]

District Director

Enclosures:
Publication 892
Form 6018

Form 6018 (Rev. August 1983)	Department of the Treasury-Internal Revenue Service Consent to Proposed Adverse Action (All references are to the Internal Revenue Code)	Prepare In Duplicate
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Case Number [REDACTED]	Date of Latest Determination Letter
Employer Identification Number [REDACTED]	Date of Proposed Adverse Action Letter SEP 20 1993

Name and Address of Organization

[REDACTED]

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

<input checked="" type="checkbox"/>	Denial of exemption
<input type="checkbox"/>	Revocation of exemption, effective
<input type="checkbox"/>	Modification of exempt status from section 501(c)() to 501(c)(), effective
<input type="checkbox"/>	Classification as a private foundation (section 509(a)), effective
<input type="checkbox"/>	Classification as a non-operating foundation (section 4942(j)(3)), effective
<input type="checkbox"/>	Classification as an organization described in section 509(a)(), effective
<input type="checkbox"/>	Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization [REDACTED]	
Signature and Title	Date
Signature and Title	Date